IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4340 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DHARMENDRASINH @ GILU RANVIRSINH AYODYASINH CHAUHAN

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR KT DAVE AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 24/01/2000

ORAL JUDGEMENT

#. Heard Ms.Subhadra Patel, learned advocate for the petitioner and Mr.K.T.Dave, learned AGP appearing for respondents No. 1, 2 & 3.

#. The detention order dated 6-5-1999 passed by

respondent No.2 - The District Magistrate, Jamnagar against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure-B on running page - 10 interalia indicates that in all 9 prohibition cases were registered against the petitioner at Jamnagar City "B" Division police station in between 27-3-97 to 4-5-1999. That except last two cases registered vide C.R.No : 377/99 and 399/99, all the cases were pending for trial in the Court. That in each case, the country made liquor was seized from the possession of the petitioner / detenu.

#. That over and above, five witnesses on assurance of anonymity have given information regarding the alleged bootlegging activities of the petitioner vide their respective statements. However, no date or time in respect to alleged incidents have been stated by the witnesses. That on the basis of the said material, the respondent No. 2 as the detaining authority has come to the conclusion that the petitioner / detenu is a bootlegger within the meaning of Section 2(b) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his anti social activities, and as such, detention order is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been submitted on behalf of the petitioner at bar that while passing the impugned order, the detaining authority has failed to consider the availability of less drastic remedy like claiming of cancellation of bail granted to the petitioner in pending cases though available under Section 437(5) of the CrPC and thereby, the subjective satisfaction reached by the detaining authority has been vitiated and has rendered the impugned order invalid.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention

order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. In the instant case, on scrutiny of papers, it appears that in grounds of detention, the detaining authority has stated that the petitioner having got himself released on bail in respect to C.R. No : 83/1997, has committed offence vide registration No : C.R. No : 284 / 97 and as such, the petitioner has no fear of general provisions of law and thereby, to prevent the petitioner, the order of detention is necessary. That the said observation does not disclose any application of mind on the part of the detaining authority to claim cancellation of bail in the cases pending for trial under Section 437 (5) of CrPC, which discloses non application of mind vitiating the subjective satisfaction and rendering the impugned order invalid.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 6-5-1999 passed by respondent No. 2 - The District Magistrate, Jamnagar against the petitioner is hereby quashed and set aside. The petitioner - Dharmendrasingh @ Gilu Ranvirsinh alias Ramsinh Chauhan is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

Date : 24-1-2000 [A.K.Trivedi, J.]

#kailash#